IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. CIVIL WRIT PETITION NO.10049/07
Kanchan Vs. Additional Civil Judge (JD) & Ors.

Date of order : 7/12/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri S.C. Gupta for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner has challenged the order dated 13.11.2007 whereby the learned trial court has on application submitted by the plaintiff-respondent passed an order for providing police help to the petitioner for implementation of its earlier interim injunction order dated 8.6.2007. The application has been controverted asserting that the Court in its earlier order dated 8.6.2007 directed that until next orders, whereby the defendants were restrained from running their engines installed at the well and

not to create any obstruction in the irrigation of the agriculture fields of the plaintiff therefrom. The defendant submitted that when they handed over copy of the injunction order to the plaintiff, the plaintiff tore away the copy and refused to comply with the order and stated that he would not permit the defendant to irrigate the agricultural land from the well. The claim of the petitioner was that this was a joint well from where both the parties have right to withdraw the water for their agricultural filed. It was alleged that defendants had created obstruction in the implementation of the injunction order because when the plaintiff wanted to again re-installed the engines after their servicing the defendant refused him to do so. The prayer was therefore made for providing the police help for petitioner in compliance

of the court order. The learned trial court has in the impugned order observed that the order dated 8.6.2007 was passed to ensure that the defendant did not create any obstruction in the irrigation of the agricultural lands of the plaintiff and from the written statement and argument, it was evident that they were doing so. On perusal of khasra girdawari also observed that the plaintiff appears to be entitled to irrigation of his agricultural land after withdrawing the water from the common wall.

Learned counsel for the petitioner has argued that the plaintiff in the garb of the earlier order dated 8.6.07 wants to install the new engine on the well and that there was absolutely no basis for the learned trial court to observe that plaintiff appeared to be prima facie entitled to withdraw water of irrigation

field from that well. It was denied that the well was joint well. Learned counsel for the petitioner argued that their already existing two wells and in this connection he also invited attention of the Court to the Commissioner's report dated 27.5.07.

All that the learned trial court by the impugned order has directed is that the compliance of its earlier order dated 8.6.07 be ensured. In the application it was alleged that when the plaintiff wanted to again put its engines after servicing, the defendant did not permit him to do so. Whether there is only two engines or whether in the garb of that order any new engine was being put, would be a matter of evidence which the trial court would determine at the time of final order in the temporary injunction application. It is not evident from the order passed by

the trial court that it has in that order permitted any new engine to be installed. If what is alleged is correct that the defendant was obstructing the withdrawal of water by the plaintiff for irrigation of land, the trial court was entitled to direct the police assistance for implementation of its earlier order. The controversy would be sorted out only when the trial court finally determines the application for temporary injunction. It is therefore impressed upon the trail court to expedite the hearing and decision of the application.

I therefore do not find any error in the impugned oder.

The writ petition which lacks merit is therefore dismissed.

(MOHAMMAD RAFIQ), J.

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